

and §1.871-8 applies, the tax on the income of the nonresident alien individual that is not effectively connected, or treated as effectively connected with the conduct of a United States trade or business shall be assessed on the basis of gross income, determined in accordance with the rules of §1.871-7, without allowance for deductions or credits (other than the credits provided by sections 31, 32, 33, 34 and 852(b)(3)(D)(ii)) and collected from one or more of the sources of income within the United States. Tax on income that is effectively connected, or treated as effectively connected, with the conduct of a United States trade or business shall be assessed in accordance with either section 1, 55 or 402(e)(1) without allowance for deductions or credits (other than the credits provided by sections 31, 32, 33, 34 and 852(b)(3)(D)(ii)) and collected from one or more of the sources of income within the United States.

(e) *Alien resident of Puerto Rico, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands.* This section shall not apply to a nonresident alien individual who is a bona fide resident of Puerto Rico, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands during the entire taxable year. See section 876 and §1.876-1.

[T.D. 8322, 55 FR 50828, Dec. 11, 1990; 56 FR 1361, Jan. 14, 1991, as amended by T.D. 8981, 67 FR 4174, Jan. 29, 2002; T.D. 9043, 68 FR 11313, Mar. 10, 2003]

#### § 1.875-1 Partnerships.

Whether a nonresident alien individual who is a member of a partnership is taxable in accordance with subsection (a), (b), or (c) of section 871 may depend on the status of the partnership. A nonresident alien individual who is a member of a partnership which is not engaged in trade or business within the United States is subject to the provisions of section 871 (a) or (b), as the case may be, depending on whether or not he receives during the taxable year an aggregate of more than \$15,400 gross income described in section 871(a), if he is not otherwise engaged in trade or business within the United States. A nonresident alien individual who is a member of a partner-

ship which at any time within the taxable year is engaged in trade or business within the United States is considered as being engaged in trade or business within the United States and is therefore taxable under section 871(c). For definition of what the term "partnership" includes, see section 7701(a)(2) and the regulations in part 301 of this chapter (Regulations on Procedure and Administration). The test of whether a partnership is engaged in trade or business within the United States is the same as in the case of a nonresident alien individual. See §1.871-8.

#### § 1.875-2 Beneficiaries of estates or trusts.

(a) [Reserved]

(b) *Exception for certain taxable years.* Notwithstanding paragraph (a) of this section, for any taxable year beginning before January 1, 1975, the grantor of a trust, whether revocable or irrevocable, is not deemed to be engaged in trade or business within the United States merely because the trustee is engaged in trade or business within the United States.

(c) [Reserved]

[T.D. 7332, 39 FR 44233, Dec. 23, 1974]

#### § 1.876-1 Alien residents of Puerto Rico, Guam, American Samoa, or the Northern Mariana Islands.

(a) *Scope.* Section 876 and this section apply to any nonresident alien individual who is a bona fide resident of Puerto Rico or of a section 931 possession during the entire taxable year.

(b) *In general.* An individual to whom this section applies is, in accordance with the provisions of section 876, subject to tax under sections 1 and 55 in generally the same manner as an alien resident of the United States. See §§1.1-1(b) and 1.871-1. The tax generally is imposed upon the taxable income of such individual, determined in accordance with section 63(a) and the regulations under that section, from sources both within and without the United States, except for amounts excluded from gross income under the provisions of section 931 or 933. For determining the form of return to be used by such an individual, see section 6012 and the regulations under that section.

(c) *Exceptions.* Though subject to the tax imposed by section 1, an individual to whom this section applies will nevertheless be treated as a nonresident alien individual for the purpose of many provisions of the Internal Revenue Code (Code) relating to nonresident alien individuals. Thus, for example, such an individual is not allowed the standard deduction (section 63(c)(6)); is subject to withholding of tax at source under chapter 3 of the Code (for example, section 1441(e)); is generally excepted from the collection of income tax at source on wages for services performed in the possession (section 3401(a)(6)); is not allowed to make a joint return (section 6013(a)(1)); and, if described in section 6072(c), must pay his first installment of estimated income tax on or before the 15th day of the 6th month of the taxable year (section 6654(j) and (k)) and must pay his income tax on or before the 15th day of the 6th month following the close of the taxable year (sections 6072(c) and 6151(a)). In addition, under section 152(b)(3), an individual is not allowed a deduction for a dependent who is a resident of the relevant possession unless the dependent is a citizen or national of the United States.

(d) *Credits against tax.* (1) Certain credits under the Internal Revenue Code are available to any taxpayer subject to the tax imposed by section 1, including individuals to whom this section applies. For example, except as otherwise provided under section 931 or 933, the credits provided by the following sections are allowable to the extent provided under such sections against the tax determined in accordance with this section—

- (i) Section 23 (relating to the credit for adoption expenses);
- (ii) Section 31 (relating to the credit for tax withheld on wages);
- (iii) Section 33 (relating to the credit for tax withheld at source on nonresident aliens); and
- (iv) Section 34 (relating to the credit for certain uses of gasoline and special fuels).

(2) Certain credits under the Internal Revenue Code are not available to nonresident aliens or are subject to limitations based on such factors as principal place of abode in the United States.

For example, the credits provided by the following sections are not allowable against the tax determined in accordance with this section except to the extent otherwise provided under such sections—

- (i) Section 22 (relating to the credit for the elderly and disabled);
- (ii) Section 25A (relating to the Hope Scholarship and Lifetime Learning Credits); and
- (iii) Section 32 (relating to the earned income credit).

(e) *Definitions.* For purposes of this section—

(1) “Bona fide resident” is defined in § 1.937-1; and

(2) “Section 931 possession” is defined in § 1.931-1(c)(1).

(f) *Effective/applicability date.* This section applies to taxable years ending after April 9, 2008.

[T.D. 9391, 73 FR 19358, Apr. 9, 2008]

#### § 1.879-1 Treatment of community income.

(a) *Treatment of community income—(1) In general.* For taxable years beginning after December 31, 1976, community income of a citizen or resident of the United States who is married to a nonresident alien individual, and the deductions properly allocable to that income, shall be divided between the U.S. citizen or resident spouse in accordance with the rules in section 879 and paragraph (a)(2) through (a)(6) of this section. This section does not apply for any taxable year with respect to which an election under section 6013 (g) or (h) is in effect. Community income for this purpose includes all gross income, whether derived from sources within or without the United States, which is treated as community income of the spouses under the community property laws of the State, foreign country, or possession of the United States in which the recipient of the income is domiciled. Income from real property also may be community income if so treated under the laws of the jurisdiction in which the real property is located.

(2) *Earned income.* Wages, salaries, or professional fees, and other amounts received as compensation for personal services actually performed, which are community income for the taxable